## REMARKS

Claims 7-24 are pending in the current application. Claims 7, 15, 19 and 22-24 are independent claims.

### Improper Finality

Applicant notes that the Examiner issued a final Office Action on May 17, 2005. Applicant respectfully traverses the finality of the Office Action.

In the Office Action of May 17, 2005, the Examiner has introduced a new art ground of rejection. The Examiner states "Applicant's arguments with respect to claims 7-24 have been considered but are moot in view of the new ground(s) of rejection" (page 9 of the Office Action). The Examiner then cites to MPEP § 706.07 (a) in asserting the finality for the Office Action (see page 9 of the Office Action). Respectfully, Applicant submits that the Examiner misunderstands the guidance of the MPEP. MPEP § 706.07 (a) recites:

> Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. § 1.97(c) with the fee set forth in 37 C.F.R. § 1.17(p). (see MPEP §706.07 (a)) (Emphasis Added)

In the present Office Action, the Examiner has issued a new art grounds of rejection which was necessitated by the Examiner's prior improper use of a reference, namely, the Levenson reference, which was withdrawn in response to a Declaration filed by the Applicant. A new art grounds of rejection necessitated by an improper reference used by the Examiner is not one of the two conditions provided by MPEP § 706.07 (a) for which the Examiner may issue a final Office Action.

As such, given the proper guidance of MPEP §706.07 (a) as above explained, the Examiner must withdraw the finality of the Office Action of May 17, 2005.

Allowable Subject Matter

Applicant appreciates the Examiner's indication that claims 11-13, 16-18 and 20-21 would be allowable if rewritten into independent form. However, Applicant respectfully submits that, in view of the below remarks, all claims are allowable in their present form.

35 U.S.C. § 103 (a) Sen in view of Kuusinen

Claims 7-10, 15, 19 and 22-24 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over Sen in view of Kuusinen. Applicant respectfully traverses this art grounds of rejection.

Sen discloses selectively delaying data communications in a wireless communication system to provide voice communications capacity. The Examiner relies on column 6, lines 66 – column 7, line 1 of the Sen reference as disclosing channel delay insertion (page 3 of the Office Action). Sen states that "[b]y adding delay via delay element 105 of the BSC 104 to the data communication, a desired increase in RTD [Round Trip Delay] will be established" (see column 66 – column 7, line 1). The delay is inserted in order to decrease a data rate of communications other than voice communications between computer 130 and computer 116 of Figures 1 and 2 (see column 6, lines 56 – column 7, line 11). Sen states "with a reduced data rate of the ongoing data communications, lesser bandwidth usage of the single channel by the data communication is achieved, such lesser bandwidth usage reducing data communication traffic on the wireless link and increasing available bandwidth for voice communications" (column 7, lines 6 – 11). Thus, Sen discloses inserting delay in order to reserve bandwidth for voice communications on a communications channel, not to decrease a number of ramp up times.

Applicant agrees with the Examiner in that the Sen reference does not "disclose [increasing] a length of time required for a time out and [decreasing] a number of ramp up times" (page 3 of the Office Action). The Examiner alleges that Kuusinen discloses this particular deficiency of the Sen.

Kuusinen discloses an apparatus and associated method for communicating packet data in a network including a radio link. Kuusinen is directed to a congestion control mechanism which reduces a number of time outs. According to Kuusinen, an "erroneous initiation of TPC congestion control measures is prevented by increasing TPC timer timeout values in conditions where there is an increased likelihood of retransmission over the radio link, for example in situations where there is degradation of the quality of the radio link or an increase in the bandwidth available from communication over the radio link. On the other hand, if true congestion of the communication network occurs, the method according to the invention still allows conventional congestion control measures to be initiated" (column 3, lines 5-14). Thus, Kuusinen discloses adjusting TPC timer timeout characteristics to reduce a number of timeouts; namely, selecting values for retransmission timers in response to events which may affect timeouts.

For example, Kuusinen states "the retransmission timeout value selector 64 is selectively operable to alter operation of the retransmission timer 52. In the event that a significant change in the radio link characteristics is detected, the timeout value of the retransmission timer is adjusted" (column 8, lines 5-9). Thus, Kuusinen discloses adjusting a length of time required for timeout by selecting a new retransmission time, not by channel delay insertion.

No Motivation to Combine

Applicant respectfully submits that the Examiner has not provided sufficient motivation to combine Sen with Kuusinen. As discussed above, Sen discloses inserting channel delay to selectively reserve bandwidth in a communication channel and discloses nothing with respect to timeout values or ramp up times. Kuusinen discloses nothing related to channel delay, but rather discloses adjusting timeout values by selectively designating timeout values. One skilled in the art would not combine Sen with Kuusinen because the priority of Sen is reserving bandwidth for voice communications and the channel delay is merely inserted into non-prioritycommunications to reserve bandwidth for the higher priority voice communications. In contrast, the object of Kuusinen is allowing retransmission timers to be selectively adjusted. In a system where retransmission timers may be selectively adjusted, such as the Kuusinen disclosure, one skilled in the art would not insert delay in order to decrease the timeouts. Rather, one skilled in the art employing the Kuusinen reference would simply select a different retransmission timer setting.

The Examiner has stated that "one skilled in the art would have recognized increase the length of time required for a timeout and decrease a number of ramp up times, would have applied Kuusinen et al.'s timeout value and Sen et al.'s add delay to the data communication" (page 3 of the Office Action). However, as discussed above, one skilled in the art would not employ Sen's channel delay insertion into the Kuusinen apparatus. The Examiner further states "it would have been obvious to one of ordinary skill in the art at the time of the invention, to use Kuusinen et al.'s apparatus and associated method, for communicating packet data in a network including a radio link and Sen et al.'s selectively delaying data communications in a

wireless communications system to provide voice communications capacity with the motivation being to prevent a TCP congestion" (page 3 of the Office Action). As discussed above, Kuusinen discloses nothing with respect to providing bandwidth to ensure a steady stream of voice communications. On the contrary, Kuusinen prevents TCP congestion by adjusting timeout values and not by inserting delay.

In view of the above, Applicant respectfully submits that the Examiner has not provided a *prima facie* motivation to combine with Kussinen. Rather, it appears that the Examiner is using impermissible hindsight in a strained attempt to reconstruct the claimed invention.

As such, claims 7-10, 15, 19 and 22-24 are allowable over the combination of Sen and Kuusinen at least for the reasons given above.

Applicant respectfully requests that the Examiner withdraw this art ground of rejection.

35 U.S.C. § 103 (a) Sen in view of Kuusinen in further view of Riihinen

Claim 14 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sen in view Kuusinen in further view of Riihinen. Applicant respectfully traverses this art grounds of rejection.

As discussed above, independent claim 7 is allowable over the combination of Sen and Kuusinen. A cursory review of Riihinen indicates that Riihinen is insufficient in overcoming the deficiencies with regard to the motivation to combine of Sen and Kuusinen as discussed above with respect to independent claim 7.

As such, claim 14, dependent upon independent claim 7 is likewise allowable over the combination of Sen, Kuusinen and Riihinen at least for the reasons given above with respect to independent claim 7.

Applicant respectfully requests that the Examiner withdraw this art ground of rejection.

## CONCLUSION

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 7-24 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By _____ 45,274

Gary D. Yacura
Reg. No. 35,416
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

*GDY/DAP/cdw*